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Before the
Federal Communications Commission
Washington, D.C. 20554
OCT 28 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
) CC Docket No. 96-128
Implementation of the)
Pay Telephone Reclassification)
and Compensation Provisions)
of the)
Telecommunications Act of 1996)
DOCKET FILE COPY ORIGINAL

To: The Commission

**COMMENTS ON AND OPPOSITION TO
PETITIONS FOR RECONSIDERATION**

AirTouch Paging ("AirTouch"), by its attorneys and pursuant to Section 1.106 of the Commission's rules and paragraph 300 of the Report and Order in CC Docket No. 96-128, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, FCC 96-388, released September 20, 1996 ("Payphone Compensation Order"), hereby submits its comments on and opposition to petitions for reconsideration of the Payphone Compensation Order, filed October 21, 1996. The following is respectfully shown:

1. The numerous petitions for reconsideration of the Payphone Compensation Order clearly articulate several bases for overturning the Commission's implementation of

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Section 276(b)(1)(A) of the Telecommunications Act of 1996,^{1/} which mandates that all payphone service providers ("PSPs") be "fairly compensated for each and every completed intrastate and interstate call using their payphone."^{2/}

2. As set forth in AirTouch's Petition for Partial Reconsideration, and echoed by many other parties urging the Commission to reconsider the Payphone Compensation Order, based on applicable precedent and the record of this proceeding, neither the decision to adopt a "carrier pays" compensation scheme for calls to 800 number subscribers placed from payphones, nor the decision to establish a compensation rate of \$.35 per call which carriers may pass along to 800 subscribers, are sustainable. As AirTouch pointed out in its Petition, this rate improperly compensates PSPs for their customer premises equipment in addition to their telecommunications services.

3. Other petitioners support AirTouch's concern that the record contradicts the Commission's determination that a "caller pays" system of compensation would be

^{1/} Pub. L. No. 104-104, Section 101(a), 110 Stat. 56 (1996), codified at 47 U.S.C. § 276 (the "1996 Act").

^{2/} 47 U.S.C. § 276(b)(1)(A).

burdensome or violative of TOCSIA.^{3/} As PageNet properly notes, a caller pays, "[c]oin in the box [system] is in fact the only method of recovery that satisfies each of the Commission's stated goals" in this proceeding.^{4/} AT&T agrees that "[t]he best way" to accomplish the Commission's stated goal of supplying consumers with information necessary to make a competitive choice is "'a caller pays/coin-in-the-box' system of compensation...."^{5/} The Commission's rejection of a caller pays system as burdensome, while adopting a rule stating that fair compensation for PSPs is the local market-based coin rate,^{6/} cannot be reconciled.^{7/}

4. Similarly, many petitioners agree that the \$.35 rate set by the Commission is not "fair", as the statute

^{3/} See Petition for Limited Reconsideration of Paging Network, Inc. ("PageNet"); Petition for Reconsideration of Personal Communications Industry Association ("PCIA") at 5-6; Petition for Reconsideration of PageMart II, Inc. ("PageMart") at 2-3; Petition of Sprint for Reconsideration at 14.

^{4/} PageNet Petition at 5. See also PCIA Petition at 5.

^{5/} AT&T Petition for Reconsideration and Clarification at 4. This would allow true competition at the purchasing party level (i.e., the calling party).

^{6/} 47 C.F.R. § 64.1300(c).

^{7/} As PageNet notes, the local coin rate overcompensates PSPs because it includes both CPE and end-to-end call completion. PageNet Petition at 10-11.

requires. While there are many explanations for why the Commission-established rate is unfair, the chief reason is that the rate is excessive.^{8/} Tellingly, with only one exception,^{9/} no party attempts to convince the Commission that it did not set the rate high enough.

5. Several petitioners note that the Commission has supplied no analysis of its conclusion that "if a rate is compensatory for local coin calls, then it is an appropriate compensation for other calls as well, because

8/ PCIA Petition at 8 (PSPs will receive a "windfall ... that will undercut effective competition in both the payphone and messaging industries"); PageNet Petition at 9-16 (the Commission's use of local coin costs as a surrogate for coinless 800 subscriber or access code calls is based on false premises); AT&T Petition at 11 (even using the RBOC Coalition's estimates, the average cost for providing payphone access for all types of payphone calls is no more than \$.32); Petition for Reconsideration and Clarification of MCI Telecommunications Corporation ("MCI") at 12 (PSPs incur no telecommunications service cost for access code and subscriber 800 calls); Sprint Petition at 5-6 (Commission ignored PSP data showing their joint and common costs are more than fully recovered from other revenue streams); Petition for Reconsideration of Worldcom, Inc. d/b/a LDDS WorldCom at 8 (Commission must drastically reduce transitional compensation amount to accurately reflect PSP costs); Petition for Reconsideration of Cable & Wireless, Inc. ("CWI") at 4-5 (reliance on local coin rate as surrogate is arbitrary and does not accurately reflect PSP costs for all types of payphone calls).

9/ Petition for Reconsideration of the Wisconsin Pay Telephone Association ("Wisconsin PTA"). AirTouch opposes the Wisconsin PTA's request to set a higher per-call compensation rate.

the cost of originating the various types of payphone calls are similar."^{10/} AirTouch agrees, and urges the Commission to conduct a thorough examination on the record of "the costs of originating" 800 subscriber calls from payphones, so that it can establish a fair compensation rate for such calls that is consistent with costs. AirTouch agrees that a cost-based analysis -- such as TELRIC -- is appropriate.^{11/}

6. As AT&T states, "the only 'fair' compensation amount is one that is based on the PSPs' costs for making payphone access available, just as the" Commission proposed to do in this proceeding.^{12/} The 1996 Act requires that PSPs be compensated "for each and every completed intrastate and interstate call," that is, for the actual services provided by payphones, not necessarily the equipment cost. The rules established in the Payphone Compensation Order, however, appear to compensate PSPs for their customer premises equipment, and not for the limited network access

^{10/} PCIA Petition at 7; AT&T Petition at 9; PageNet Petition at 12-16.

^{11/} See AT&T Petition at 5-8; MCI Petition at 12-13; WorldCom Petition at 8; CWI Petition at 4; PageNet Petition at 9; PCIA Petition at 7.

^{12/} AT&T Petition at 13.

they offer.^{13/} This result is inconsistent with Section 276(b) (1) (A).^{14/}

7. In sum, the petitions for reconsideration of the Payphone Compensation Order demonstrate conclusively that a carrier pays system does not, as the Commission concluded, "place[] the payment obligation on the primary economic beneficiary in the least burdensome, most cost effective manner."^{15/} In fact, as the record shows, a caller pays compensation system more fairly and efficiently satisfies the Commission's stated goals.

^{13/} See AirTouch Petition for Partial Reconsideration at 13-14.

^{14/} See also AT&T Petition at 5-8; PageNet Petition at 6; AirTouch Petition at 14 (noting that the rules adopted in the Payphone Compensation Order also are inconsistent with the Commission's Local Competition Order).

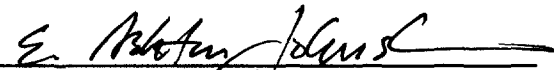
^{15/} Payphone Compensation Order, para. 83.

WHEREFORE, the foregoing premises duly considered,
AirTouch Paging requests that the Commission grant its
Petition for Partial Reconsideration of the Report and Order
in CC Docket No. 96-128.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Nadine Smith-Garrett, a secretary at the law firm of Paul, Hastings, Janofsky & Walker LLP, hereby certify that I have on this 28th day of October, 1996, caused a true and correct copy of AirTouch Paging's foregoing Comments on Petitions for Reconsideration to be sent by first-class United States mail, or by hand delivery*, to the following:

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